

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR BER

Agenda # II.A.1.

Summary: The Department is proposing rulemaking to increase the fees assessed to solid waste management systems (SWMS). Solid waste management systems currently regulated by the department include landfills, transfer stations, resource recovery facilities, petroleum impacted soil treatment facilities or landfarms, municipal solid waste (MSW) incinerators, infectious or medical waste treatment facilities, and compost facilities. The Solid Waste Program statutorily collects fees for application review, license transfer, and the annual renewal of solid waste management system licenses. A tonnage fee is also collected from Class II (MSW) landfills and Class IV construction and demolition (C&D) waste landfills for each ton of waste disposed at those facilities. Class III landfills or other inert waste facilities are not currently assessed a tonnage fee. A limited number of Class II landfills are assessed an additional fee for each ton of out-of-state wastes disposed of in their facilities.

The SWP activities are primarily funded by the revenue generated by fees charged to the solid waste management system license holders. These activities include the issuing of licenses, monitoring, inspections, compliance assistance and enforcement at licensed and unlicensed SWMS. The fees also fund 11 full time employees (FTEs) in the Solid Waste Licensing and Regulatory programs, the Pollution Prevention Program and the Department's Legal Unit.

The fees assessed to each SWMS are based on the type of waste collected, the waste handling process and volume/tonnage of waste treated, stored, or disposed of. Licensed SWMS are assessed a license renewal fee by June 30th of each year or at the end of the fiscal year. The fees assessed at the end of the fiscal year reflect the operation of the facility for the previous calendar year. The fees are subsequently remitted to the Department on a quarterly payment schedule during the new fiscal year.

List of Affected Rules: ARM 17.50.401, 17.50.402, 17.50.403, 17.50.410, 17.50.411, 17.50.412 and 17.50.416

Affected Parties Summary: The requested rules affect all solid waste management system license applicants and license holders.

Scope of Proposed Proceeding: The Department is requesting initiation of rulemaking and appointment of a hearing officer for a public hearing.

Background:

The proposed rule is to revise the current solid waste fee rules to increase solid waste management fees as well as to revise the existing fee structure to assess fees against

facilities that have not been charged fees in the past. Solid waste fees were originally established by statute during the 1991 Legislature. The fees have not been adjusted since. Senate Bill 161 in the 2001 Legislature changed this and gave the BER the authority to set fees, allowing the department more flexibility in adjusting or setting fees.

In the years since the implementation of the fees, the SWP has absorbed the increased cost of regulating waste management facilities without passing it on to the regulated facilities. This was achieved by vacancy savings from 1995 to 2000. The continued evolution of waste management systems, the implementation of new federal and state requirements for the management of municipal solid waste (MSW) and increased compliance activities, has necessitated the full staffing of the SWP to handle the increased workload. As a result, the cost of running the program has now exceeded the revenue and the SWP is projected to have a negative fund balance at the end of fiscal year 2004 (FY04). Revised fee rules are necessary to fund the SWP and maintain current staffing levels into the future.

The primary purpose of the solid waste regulations is to protect the health and welfare of Montana citizens from improperly operated solid waste management systems and the improper and unregulated disposal of wastes. Improper and unregulated disposal of wastes impacts natural resources such as air quality and ground and surface waters. The current fee structure was intended to reflect the SWP's regulatory costs for waste management systems licensed by the department. These costs vary as waste management systems vary in complexity, the type of waste handled and the potential impact they may have on the environment, particularly ground and surface water resources. When the fees were implemented, only two primary solid waste management systems existed, those being Class II Landfill for MSW wastes and Class III Landfills for inert wastes. The proposed fee structure now has to recognize new solid waste management systems and the costs involved in regulating them. These facilities include biosolids composting facilities, landfarms, construction and demolition waste landfills, infectious waste treatment facilities, and other evolving waste management systems.

The proposed rules and fee increases are supported by the Solid Waste Advisory Committee (SWAC). The SWAC consists of owners or operators of solid waste management systems of varying types and public and private sectors ownership. The input from the SWAC was key in formulating the fee schedule that has been proposed in the revised rule. Recommendations from the SWAC included 1) an across the board increase in the base annual license renewal, application and license transfer fees and a tonnage/volume fee increase for the facilities that pay a tonnage fee; 2) a tonnage fee for all Group II waste handling facilities that do not currently pay a tonnage fee, such as composting facilities; and 3) a tonnage fee for Class III inert waste treatment, storage and disposal facilities.

Based on the revenue versus expenditure projections for the next five years beginning in FY04, expenditures will surpass the program's fee revenue. An overall 28% increase is necessary to allow the program to function at the current level. A 28% increase equates

to approximately \$134,700 in additional revenue per year for the SWP for two years beginning in FY 05.

Taking into account the recommendations of department fiscal personnel and the SWAC, the proposed fee rules include a fee increase based on a 20% base increase in the annual license renewal, application and license transfer fees for all solid waste management systems. The proposed fee increase will also include a \$0.09 increase in the tonnage fee assessed to Class II and Class IV landfills. This would raise the existing tonnage fee from \$0.31 to \$0.40 per ton. All other Class II as well as Class III waste processing and/or disposal facilities, such as landfarms, resource recovery facilities and compost facilities will also be charged a tonnage fee. These facilities do not currently pay tonnage fees.

Hearing Information: The Department requests that a hearing officer be appointed and that a hearing be conducted.

Board Options: The Board may:

1. Initiate rulemaking and appoint a hearing officer;
2. Determine that the adoption of rules is not appropriate and decline to initiate rulemaking; or
3. Direct the Department to modify the rulemaking and proceed.

Enclosures:

1. Notice of Public Hearing on Proposed Amendment